

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**ZEVON McCARTER,**

**Plaintiff,**

**vs.**

**CHRISTOPHER KNIGHT, et al**

**Defendants.**

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**CIVIL ACTION NO 11-0096-KD-N**

**ORDER**

This action is before the Court on plaintiff Zevon McCarter's "Motion to Voluntarily Dismiss Complaint" wherein he moves the Court to "dismiss his complaint . . . without prejudice". (doc. 21). The docket indicates that defendants have not been served with the summons and complaint and therefore, have not served an answer or a motion for summary judgment. (Doc. 19, order entered June 29, 2011, by United States Magistrate Judge Katherine P. Nelson stating that review pursuant to 28 U.S.C. § 1915(e)(2)(B) is not complete).

Because the defendants have not served an answer or a motion for summary judgment, McCarter may dismiss this action without prejudice. Fed. R. Civ. P. 41(a)(1)(A)(i) (providing for voluntary dismissal by the plaintiff "before the opposing party services either an answer or a motion for summary judgment".); Fed. R. Civ. P. 41(a)(1)(B) ("Unless the notice or stipulations states otherwise, the dismissal is without prejudice.").

Accordingly, this action is **dismissed without prejudice** and the Clerk of the Court is directed to close this action.

**DONE and ORDERED** this 31st day of August, 2011.

s / Kristi K DuBose  
**KRISTI K. DuBOSE**  
**UNITED STATES DISTRICT JUDGE**